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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 452

FRED BENNETT,

Appellant,

vs.

THE CITY OF DALTON, GEORGIA,

Appellee.

APPEAL FROM THE GEORGIA COURT OF APPEALS.

STATEMENT AS TO JURISDICTION.

In compliance with Rule 12 (1) of the Rules of the Supreme Court of the United States, as amended April 6, 1942, appellant files a *statement as to jurisdiction* disclosing the basis upon which it is contended that the Supreme Court has jurisdiction upon appeal to review the judgment in question.

Statutory Provisions Sustaining Jurisdiction.

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code [28 U. S. C. 344 (a)].

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error.

Georgia Legislation Questioned.

In this case the validity of certain portions of the Code of the City of Dalton, Georgia, is called into question as being unconstitutionally construed and applied to the facts and circumstances of this case. The questioned sections read:

"Section 495—Any person guilty of a violation of the Penal Ordinances of the City of Dalton, passed by the Mayor and Council by virtue of the authority given in the charter of said City, as codified in this code, shall be punished, on conviction therefor in the Recorder's Court, by a fine not exceeding fifty dollars or imprisonment not to exceed twenty days, or work upon the public streets of the city not to exceed twenty days, any one or all in the discretion of the court trying such offender."

"Section 496—Quarreling or otherwise acting in a disorderly manner within the corporate limits of said city is prohibited."

"Section 514—Disorderly conduct in the City is prohibited."

Timeliness.

The Georgia Court of Appeals rendered and entered its judgment in this case on April 21, 1943. (Appendix p. 17, R. 29.) On April 30, 1943, appellant duly and properly filed his motion for rehearing with the Court of Appeals of Georgia. R. 33. On May 20, 1943, the Georgia Court of Appeals handed down its opinion on rehearing of the case,

[Appendix p. 19] and denied appellant's motion for rehearing (R. 31). Appellant then filed his petition for certiorari with the Supreme Court of Georgia within the time and manner prescribed by law, but the court denied the petition and appellant filed a motion for reconsideration. This motion for reconsideration was denied by the Supreme Court of Georgia on July 22, 1943 and the judgment of the Georgia Court of Appeals became final (R. 45). The petition for appeal and other papers required by the rules of this Court are filed within three months from the date such judgment became final, and hence this appeal is timely made.

Opinions.

The opinion of the Georgia Court of Appeals is attached hereto as Appendix A to this statement. It also appears in the Record at pages 29 to 30. The opinion of the Georgia Court of Appeals on motion for rehearing is attached hereto as Appendix B to this statement. It also appears in the record at page 31.

Statement of Nature of the Case and Rulings of Court Bringing Case Within Jurisdictional Provisions Relied Upon.

The appellant was charged by complaint and tried in the Recorder's Court of the City of Dalton, Georgia, for the alleged offense of "blocking the sidewalk" and "disorderly conduct" (R. 6-7). After hearing the evidence, the Recorder, on May 25, 1942, adjudged appellant guilty and assessed a fine of Five ($5.00) Dollars and in default thereof sentenced him to serve "five days on the streets" (R. 7). Within the manner and in the time prescribed by the laws of Georgia, appellant then filed a petition for a writ of certiorari with the Superior Court of Whitfield County, asking that the judgment of the Recorder's Court be reviewed

(R. 6-16). This petition was overruled by the said Superior Court and appellant assigned such judgment as grounds of appeal to the Georgia Court of Appeals (R. 1). On appeal, the Georgia Court of Appeals on April 21, 1943, affirmed the judgment of the Superior Court in denying the petition for certiorari (R. 29). Appellant filed a motion for rehearing with the Court of Appeals on April 30, 1943, alleging that the said judgment of the Court was in violation of the Federal Constitution, namely the First and Fourteenth Amendments thereof, guaranteeing to the citizens of the United States their rights of freedom of worship, freedom of speech, and freedom of press (R. 33). The Court of Appeals considered the constitutional aspect of the case and ruled thereon in its judgment and opinion on rehearing. The Court held that the sections of the Code of the City of Dalton drawn into question and as construed and applied by the Recorder's Court, did not infringe appellant's rights under the Constitution of the United States, freely to worship God, freely to speak, freely to exercise his right of publication and press (R. 31).

Statement of Facts.

The evidence in the trial court was for the most part in accord and not in dispute. Appellant, who testified that he was an ordained minister of Almighty God Jehovah, said that he and his partner, J. C. Jones, were standing on the sidewalk along the main street of the City of Dalton at the time in question. Their purpose in standing there was to distribute literature published by the Watchtower Bible and Tract Society, Inc., a New York corporation chartered under the Membership Corporations Law of New York. Appellant and his partner were standing on the sidewalk near the curb, out of the way of the passing pedestrians. They were standing within a few steps of each other. R. 8, 9, & 26 par. 3.

Each one carried a cloth magazine bag suspended from his shoulders by means of cloth straps. On one side of the bag there appeared the words: "Watchtower—Explains the Theocratic Government, five cents per copy" and on the other side, "Watchtower and Consolation—five cents per copy". Each carried in his hands sample copies of the magazines, Consolation and Watchtower, which were displayed to the persons passing up and down the sidewalk. R. 8, 9.

It was while appellant and his partner were thus engaged that one A. Romines, passed by appellant's partner, J. C. Jones. Jones held out a copy of the Watchtower magazine as Romines passed by him, and without provocation, Romines stepped closer to Jones and as he says:

'I stepped forward and took a swing at Jones striking him in the face with my fist. Then I swung and hit him in the head. I swung the third time but was not sure that I connected.' R. 8.

Neither appellant nor his partner made any effort to forcibly resist the attack upon Jones (R. 8, 9). A crowd began to gather at the scene of the disturbance and a police officer of the city appeared upon the scene. As he approached the crowd he said that he saw Jones and the appellant standing on the sidewalk and that apparently the crowd was gathered around them, so he told them that if they were going to sell magazines that they would have to do it on a side street (R. 7). Appellant and his partner declined to do this saying that they were obeying the Lord's command to preach the gospel by distributing the Watchtower magazine (R. 7, 8). At this the police officer placed the two under arrest and took them to the police headquarters (R. 8).

The police officer testified that he did not see either appellant or Jones do anything wrong, his only objection being that a crowd was standing around them in a "menacing"

manner (R. 7). There was no evidence that appellant or his partner were acting in an improper manner. They were not in any way blocking or impeding the flow of traffic on the sidewalk, which was 12 or 15 feet wide at the point where they were standing (R. 7).

The Watchtower magazine was introduced in evidence. An examination of its pages, and particularly the inside of the front cover thereof, reveals it to be a publication devoted exclusively to the Bible and its prophecies. The Watchtower advocates that Jehovah God is the only true God, Maker of heaven and earth, and the Giver of life to His creatures; that God created the earth for man, originally made perfect, and placed man upon it; that man wilfully disobeyed God's law and was sentenced to death, and by reason thereof, death came upon all the descendants of the first man, Adam; that Jesus Christ was made human through miraculous conception and birth and suffered death in order to provide a redemption price, for those only of mankind who desire to serve Jehovah God and live; that Jesus was thereafter raised unto heaven and placed at the right hand of Jehovah God, His Father, to be the King of Jehovah's everlasting government, The Theocracy, and thereafter proceeded to oust the adversary Satan and his legion of wicked angels from heaven; that Satan is now attempting to turn all mankind away from God and into destruction and violently to oppose and destroy those who dare to act as witnesses for Jehovah God, His Word, and His Kingdom, as did Christ Jesus when on earth; that Christ Jesus is the great Executioner for the Supreme Judge and is now proceeding to execute judgment of everlasting destruction upon Satan's governments and all supporters thereof, invisible and visible in the earth in Jehovah's battle at Armageddon, which is now very near, following which there will be established completely and fully in the earth the righteous government, Jehovah's "new

world", for which Christ Jesus taught all true servants of Jehovah to pray. The Watchtower strictly adheres to the Bible as authority for its utterances, being free and separate from all religion, parties, sects or worldly organizations. It is wholly and without reservation for the Kingdom of Jehovah God under Christ Jesus His beloved King. It does not indulge in controversy and its columns are not open to personalities. An examination of The Watchtower conclusively proves that its pages from cover to cover of each issue contain written sermons explaining the foregoing matters in greater detail (R. 12).

The police officer testified, and his testimony in this regard was unsupported, that he saw appellant and Jones in the middle of the crowd that was collected upon the sidewalk talking in a "loud and boisterous manner" (R. 7). But it was vigorously denied by appellant that either he or Jones acted improperly either by word or act before or after the assault (R. 8, 9). Appellant said that the reason he did not move on when ordered so to do by the police officer was not because he desired to flout the law, but that because he was engaged in a lawful activity of preaching the gospel of God's Kingdom in a lawful manner, and that since he was in no way responsible or involved in the assault made by Romines upon Jones, he left that he was not obliged to cease his distribution of the magazines and "move on" as commanded by the officer (R. 9).

Grounds and Decisions Sustaining the Jurisdiction and Showing That Substantial Federal Questions Are Involved.

1. The sections of the Code of the City of Dalton here drawn in question, are unconstitutional as construed and applied to the acts and activity of appellant because they abridge his right to freedom of press, freedom of speech, and freedom to worship Almighty God as his minister, con-

trary to the First and Fourteenth Amendments to the Constitution of the United States.

Cantwell v. *Connecticut*, 310 U. S. 296; *Schneider* v. *State of New Jersey*, 308 U. S. 147; *Lovell* v. *Griffin*, 303 U. S. 444; *Jamison* v. *State of Texas*, 318 U. S. 413; *Largent* v. *State of Texas*, 318 U. S. 418; *Murdock* v. *Commonwealth of Pennsylvania*, 319 U. S. —, 63 S. Ct. 870; *Hague* v. *C. I. O.*, 307 U. S. 496; *Herndon* v. *Lowry*, 301 U. S. 242; *Near* v. *Minnesota*, 283 U. S. 697; *Martin* v. *Struthers*, 319 U. S. —, 63 S. Ct. 862; *Dearborn Publishing Co.* v. *Fitzgerald*, 271 Fed. 479; *Milk Wagon Drivers Union, etc.* v. *Meadowmoor Dairies*, 312 U. S. 287.

2. The sections of the Code of the City of Dalton, here drawn in question, are unconstitutional on their face and as construed and applied to the acts and activity of appellant because they vest the police with unreasonable and unlimited arbitrary and discriminatory powers, prescribe no conditions upon which said police authority may or may not order one to move on, permit arbitrary discrimination and speculation as to what constitutes disorderly conduct, and allow a dragnet to be made of the ordinances, thus denying due process of law contrary to the First and Fourteenth Amendments to the Constitution of the United States.

Hague v. *C. I. O.*, 307 U. S. 496; *Yick Wo* v. *Hopkins*, 118 U. S. 356; *Connelly* v. *General Construction Co.*, 269 U. S. 385; *Slaughter-house* Cases, 16 Wall. 79; *United States* v. *Cruikshank*, 92 U. S. 542; *Smith* v. *Cahoon*, 283 U. S. 564; *Detroit Creamery et al.* v. *Kinnan et al.*, 264 Fed. 845; *Small Co.* v. *American Sugar Refining Co.*, 267 U. S. 233; *United States* v. *Ballard*, 12 F. Supp. 321; *Lanzetta et al.* v. *State*, 59 S. Ct. 618, 306 U. S. 451; *International Harvester Co.* v. *Kentucky*, 234 U. S. 217; *Stromberg* v. *California*, 283 U. S. 359; *United States* v. *Cohen Grocery Co.*, 255 U. S. 81.

Discussion of Law in Question and of Federal Questions Presented on This Appeal.

The undisputed evidence in this case shows that appellant was at all times, during the disturbance which took place, merely an innocent bystander, and there is not any evidence to indicate that he was unruly or disorderly in any way. The policeman who arrested appellant admitted that the conduct of appellant was not disorderly in any way until he refused to obey the police officer's demand to 'move on'. The arrest giving rise to this case took place solely because appellant refused to quit his lawful work and leave the street upon the direction of the officer. The Georgia courts have construed the ordinances so as to bring this act of appellant within the meaning of the sections in question and to give their sanction to the authority assumed by the police officer. The question thus presented to this court is whether such a construction contravenes the constitutional rights of appellant as aforesaid.

The activity of appellant, a minister of Jehovah's witnesses, has been held by this Court repeatedly to have the protection afforded by the shield of the First and Fourteenth Amendments to the United States Constitution. (*Cantwell* v. *Connecticut*, 310 U. S. 296; *Schneider* v. *State of New Jersey*, 308 U. S. 147; *Lovell* v. *Griffin*, 303 U. S. 444; *Jamison* v. *State of Texas*, 318 U. S. 413; *Largent* v. *State of Texas*, 318 U. S. 418; *Murdock* v. *Commonwealth of Pennsylvania*, 319 U. S. —, 63 S. Ct. 870; *Martin* v. *Struthers*, 319 U. S. —, 63 S. Ct. 862.) On all other occasions, no crowd gathered about appellant and his partner as they distributed their literature. There is no intimation or suggestion in the evidence that the traffic was at any time impeded or blocked by reason of people congregating around appellant or his partner, Jones. On the occasion that the crowd did gather it was solely because the curious passersby

on the street wanted to see the brutal and unlawful beating that the City's witness Romines was administering to the unoffending Jones. The collection of the crowd had no relation to the work being done by appellant.

Appellant takes the position that neither he nor his partner were at any time disorderly. By his uncalled for and unprovoked assault and battery upon Jones, the City's witness Romines caused a crowd to gather and disturbed the peace. He violated the law, but was not arrested. If anyone was to be arrested for disorderly conduct it should have been the witness Romines, but the policeman chose to place the appellant and his partner under arrest. Why? For the manifest reason that the officer was trying to accomplish indirectly what he could not otherwise do directly, namely, stop the work being done by appellant and his companion.

The officer testified that his object in ordering appellant and Jones to get off of the street was so that the crowd would disperse. This entirely overlooks the consideration that they were admittedly not the cause of the congregation of the crowd in the first place. Thus the theory upon which the arrest was made and the conviction had, is much the same in principle as was involved in the case of *Dearborn Publishing Company* v. *Fitzgerald*, 271 Fed. 479. In that case the court granted the Dearborn Publishing Company, an injunction, restraining the mayor of Cleveland, Ohio, from arresting the street distributors of the Dearborn Independent, which contained articles of a vicious and scurrilous nature against the Jewish race. The defendants in that case arrested and threatened the arrest of the distributors because there had been mob violence and threatened mob violence between those of the Jewish race, their sympathizers, and the distributors of the literature. The defendants in that case resorted to an ordinance that pro-

hibited the distribution of literature that might tend or cause a breach of the peace. The United States District Court granted the injunction. As is contended by the police officer's testimony, he thought it was necessary to take action against the distributors of the literature to prevent disturbance and to preserve "law and order". However, in the Dearborn case, such contention of public convenience was held not to justify the suppression of the right of freedom of the press, the court saying:

> "If it be assumed that the article might tend to excite others to breaches of the peace, the reply is plain. It is the duty of all officials charged with preserving order and peace to suppress firmly and promptly all persons guilty of disturbing it, and not forbid innocent persons to exercise their lawful and equal rights. * * * If defendants' actions were sustained, the constitutional liberty of every citizen freely to speak, write and publish his sentiments on all subjects, being responsible only for abuse of that right, would be placed at the mercy of every public official who for the moment was clothed with authority to preserve the public peace and the right to a free press thus destroyed."

The effect of the arrest of appellant and his companion and the opinion of the Georgia Court of Appeals based on such arrest, is to place a severe penalty over the heads of those who are exercising their rights of freedom of press, freedom of speech and freedom of worship, in the manner of appellant; that is by making them subject to conviction for any disturbance that might occur on the streets as a result of some third party's display of disapproval. Thus all persons desiring to exercise these freedoms are for all practical purposes enjoined from doing so by reason of the penalty placed over their heads by this decision of the court below. This brings the facts of this case directly within the

ruling by this Court in *Near* v. *Minnesota*, 283 U. S. 697, 721, 722:

> "Equally unavailing is the insistence that the statute is designed to prevent the circulation of scandal which tends to disturb the public peace and to provoke assaults and commission of crime. Charges of reprehensible conduct, and in particular of official malfeasance, unquestionably creates a public scandal, but the theory of the constitutional guaranty is that even a more serious public evil would be caused by authority to prevent publication 'To prohibit the intent to excite those unfavorable sentiments against those who administer the government, is equivalent to a prohibition of discussions having that tendency and effect; which again, is equivalent to a protection of those who administer the Government, if they should at any time deserve the contempt or hatred of the people, against being exposed to it by free animadversions on their character and conduct.' [Report on the Virginia Resolutions, Madison's Works, Vol. IV, Pages 543, 549.] There is nothing new in the fact that charges of reprehensible conduct may create resentment and the disposition to resort to violent means of redress, but this well understood tendency did not alter the determination to protect the press against censorship and restraint upon publication. As was said in New Yorkers Staats-Zeitung *v.* Nolan, 89 N. J. Eq. 387, 388, 105 Atl. 72: 'If the township may prevent the circulation of a newspaper for no reason other than that some of its inhabitants may violently disagree with it, and resent its circulation by resorting to physical violence, there is no limit to what may be prohibited.' The danger of violence becomes greater with effective organization of defiant groups resenting exposure, and if this consideration warranted legislation to interfere with the initial freedom of publication, the constitutional protection would be reduced to a new form of words."

The conclusions reached by this Court in *Milk Wagon Drivers Union* v. *Meadowmoor Dairies,* 312 U. S. 287, 293-299, cannot be drawn here. On the contrary, the facts in the case at bar come clearly within the exception announced by Justice Frankfurter in that case, to-wit:

> "* * * And so the right of free speech cannot be denied by drawing from a trivial rough incident or a moment of animal exuberance the conclusion that otherwise peaceful picketing has the taint of force. * * *
>
> "Right to free speech in the future cannot be forfeited because of dissociated acts of past violence. Nor may a state enjoin peaceful picketing merely because it may provoke violence in others. * * *
>
> "Here again, the state courts have not the last say. They must act in subordination to the duty of this Court to enforce constitutional liberties even when denied through spurious findings of fact in a state court."

In this case, the sections of the Code in question do not specifically define any acts of which the appellant might have at the time reasonably committed. The Court of Appeals found that the refusal of the appellant to move on when ordered so to do by the officer constituted the "disorderly conduct". Thus the effect of the holding is that all police officers in the city have the right to order any citizen to "move on" and then if that citizen refuses, even though his reason therefor be valid, he makes himself liable for prosecution for "disorderly conduct". This makes the policeman absolute dictator and judge, having the power to determine when a person may or may not be charged, prosecuted and found guilty of disorderly conduct.

This discriminatory power absolutely uncontrolled by any ordinance, is therefore unreasonable and violates the constitutional provision securing to every citizen his right to "due process of law".

For instance, a policeman might have a personal grudge against another; or he might not like a person because of "the color of his hair"; and acting on such prejudices could order such a person standing on the street to move on, and if that one failed so to do, he would be guilty of violation of this ordinance. It has been held time and time again by this Court, that ordinances vesting an administrative officer with power to issue a permit to distribute literature are unconstitutional and void if they fail to limit the officer's exercise of discretion. If sustained, the opinion of the Georgia Court of Appeals would hand to the police officers the very unconstitutional discretion that this Court has denied in the permit-cases.

There are listed on page 8 of this *Statement*, a partial list of cases which have held that such laws and ordinances such as the ones here under consideration, are unconstitutional because of the fact that they conferred upon some administrative official arbitrary and discriminatory power, and because they were vague, indefinite, and constituted a dragnet for penalties.

If the doctrine supported and approved by the Georgia Court of Appeals is permitted to stand, then there is no end to which the people would be swept away from their liberties guaranteed by the Constitution. If the strange theory of law set out in this decision is allowed to stand, then without any lawful cause, police officers can arbitrarily order any person rightfully upon the street to get off the street, and failing in this, such person makes himself liable for conviction of the crime of "disorderly conduct." The whole theory of the decision herein called in question, is bottomed on the principle that the police have the authority thus to prevent violence and disorder, and to keep the sidewalks from becoming blocked and jammed. This in effect inters the law-abiding citizens and imprisons them in order

to permit the law violators to run loose on the streets. If the principle of the decision below be extended, then a newsboy could be prosecuted as appellant was for the offense "disorderly conduct", if his papers happened to carry news which was odious, bad, unpopular or distasteful to certain excitable or unpredictable persons, and the local policeman saw fit to order him off the streets.

We submit that appellant should have received the necessary protection and cooperation from the police of the City of Dalton to stop the unlawful acts of the village thug and tyrant who openly and admittedly was seeking to clear the streets of all he disliked. But instead of performing their duty, the police force, acting under the sections of the City Code here drawn in question undertook to further the purpose of the lawless mobster by ordering the appellant and his partner off the street in utter disregard of their constitutional rights. The effect of the holding of the court below is to place the constitutional liberties of law abiding citizens at the mercy of thugs and within the discretion of village police. This decree cannot be permitted to stand.

Conclusion.

For sake of brevity, reference is here made to the Petition for Appeal filed in this cause, with which we incorporate by such reference, each and every assignment of error therein contained and hereby make the same a part hereof to show that substantial Federal questions were presented before the Georgia Court of Appeals.

Wherefore, the Supreme Court of the United States should note jurisdiction of this cause for final hearing in accordance with the rules of the Court, because the courts below disposed of important and substantial Federal questions in a way that is in conflict with applicable decisions of this Court and have so radically and far departed from the Constitution of the United States and the accepted

sound course of judicial procedure as to call for this Court's power of supervision and review to halt the same.

Respectfully submitted,

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APPENDIX A.

GEORGIA COURT OF APPEALS.

No. 29958.

FRED BENNETT

vs.

THE CITY OF DALTON

No. 29973.

J. C. JONES

vs.

THE CITY OF DALTON

OPINION—[April 21, 1943.]

In each case, the overruling of the certiorari was not error.

BROYLES, *C. J.:*

Fred Bennett and J. C. Jones were convicted in the recorder's court of the City of Dalton of the offense of "disorderly conduct"; their petitions for certiorari were overruled by the judge of the Superior Court and those judgments are assigned as error. The two defendants were tried for violating sections 496 and 514 of the city's ordinances. Section 496 reads as follows: "Quarreling or otherwise acting in a disorderly manner within the corporate limits of said city is prohibited." Section 514 provides: "Disorderly conduct in city prohibited."

Each defendant testified for the other defendant and made a statement in behalf of himself. Their testimony was that while they were quietly standing on the sidewalk and offering a magazine named "The Watchtower" to those passing by, a man named Romines made an unprovoked assault and battery upon Jones which caused a large crowd to gather, that a policeman came up and arrested them and

let Romines go; that neither of them was disorderly in any way and neither of them attempted to defend Jones against Romines' attack. As shown by the answer of the recorder (and this part of the answer was not traversed or excepted to) the policeman testified as follows: "I noticed quite a crowd at the corner of Gordon and Hamilton Streets, Dalton, Georgia. I noticed J. C. Jones and Fred Bennett in the center doing the talking in a loud and boisterous manner, creating quite a disturbance and causing a crowd to congregate. The sidewalk was practically blocked. Pedestrians up and down the street were having trouble getting through. They were in the center doing the talking, and I knew if they would move on the crowd would break up; with this in view, I asked them to move on; they did not do so, and told them they would have to move on or I would take them to police headquarters. They replied they were doing the Lord's work and that they would have me locked up. After having asked them twice to move on, and they showing no willingness to do so, I carried them to the police headquarters and they were afterwards locked up." The defendants did not deny that the officer asked them to move on or that they refused to do so. It further appears that the policeman arrived on the scene after Jones had been assaulted by Romines, and it does not appear from the evidence that he knew that the assault had been made.

The testimony of the policeman authorized the recorder, sitting as both judge and jury, to find that the refusal of the defendants to move on, after having been directed to do so by an officer of the law, constituted disorderly conduct. In each case, the overruling of the certiorari was not in error for any reason assigned.

Judgment affirmed.

MacIntyre and Gardner, *JJ.* concur.

APPENDIX B.

GEORGIA COURT OF APPEALS.

No. 29958

On Motion for Rehearing.

FRED BENNETT

vs.

THE CITY OF DALTON

No. 29973

On Motion for Rehearing.

J. C. JONES

vs.

THE CITY OF DALTON

OPINION—May 20, 1943.

BROYLES, *C. J.*:

Counsel for Movant in his motion for rehearing states: "The court in its opinion assumes the validity of the ordinance as applied. It's attention is directed mainly to the question whether the statute as applied infringes the Constitutional provisions guaranteeing freedom of speech, freedom of press, freedom of worship, and religious liberty."

As stated in our opinion, "the two defendants were tried for violating sections 496 and 514 of the City's ordinances. Section 496 reads as follows: 'Quarreling or otherwise acting in a disorderly manner within the corporate limits of said city is prohibited.' Section 514 provides: 'Disorderly conduct in City prohibited.' " It is obvious from the language of these ordinances that they have no connection whatever with the infringement of the Constitutional pro-

visions guaranteeing the four freedoms specified by counsel in his motion, and the other grounds of the motion show no cause for a rehearing.

Motion denied.

MacIntyre and Gardner, *JJ.*, concur.

Filed in office Sep. 28, 1943. W. G. England, Clerk, C. A. Ga.

(8632)

No. 60. MARVICH *v.* CALIFORNIA ET AL. Certiorari, 319 U. S. 739, to the Supreme Court of California. November 15, 1943. *Per Curiam:* The motion of respondent to remand is granted, the judgment is vacated and the cause is remanded to the Supreme Court of California for further proceedings. *Mr. Neil Burkinshaw* for petitioner.

Messrs. Robert W. Kenny, Attorney General of California, and *Eugene M. Elson,* Deputy Attorney General, for respondents. Reported below: 44 Cal. App. 2d 858, 113 P. 2d 223.